

## § 1400.210

(3) Make a contribution to the farming operation that is at risk for a loss, with the level of risk being commensurate with such person's claimed share of the farming operation.

### **§ 1400.210 Deceased and incapacitated persons.**

If the person dies or is incapacitated before a determination is made that the person is "actively engaged in farming," the representative of the deceased person's estate or the incapacitated person, or other person if necessary, must provide the determining authority information to verify that such person did make a conscious effort to and would have been determined to be actively engaged in farming if not for the person's death or incapacitation. If the person dies or is incapacitated after being determined to be "actively engaged in farming," the determining authority will allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such person or the person's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

### **§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.**

Any person or legal entity that does not satisfy all of the applicable provisions of §§1400.201 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity will not be considered to be actively engaged in farming with respect to the farming operation.

### **§ 1400.212 Growers of hybrid seed.**

The existence of a hybrid seed contract for a person or legal entity will not be taken into account when making an actively engaged in farming determination with respect to such person or legal entity. However, such person or legal entity must satisfy all other applicable provisions of this part.

### **§ 1400.213 Military personnel.**

If a person is called to active duty in the military before a determination is made that the person is actively en-

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gaged in farming, the person may be considered to be actively engaged in farming if the determining authority determines that such person did make a conscious effort to, and would have been determined to be, actively engaged in farming if the person would not have been called to active duty. If the person is called to active duty after being determined to be actively engaged in farming, such determination will remain in effect for the program year.

## **Subpart D—Cash Rent Tenants**

### **§ 1400.301 Eligibility.**

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in §1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to such cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor or

(2) Significant contributions of both active personal management and equipment.

(b) If the equipment is leased by the tenant from:

(1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area or

(2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.

(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop